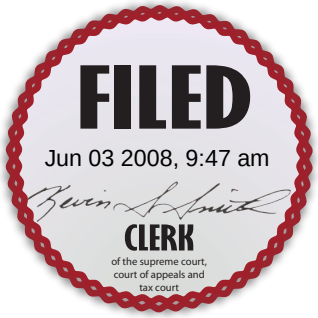

APPELLANT PRO SE:

LLOYD G. PERRY
Fort Wayne, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LLOYD G. PERRY,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 33A04-0711-CV-648
	)	
PAPER TRUST,	)	
	)	
Appellee.	)	

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Bob A. Witham, Judge
Cause No. 33D02-0503-PL-4

June 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Lloyd G. Perry, pro se,[1] appeals the trial court's denial of his motion to aside the trial court's order entering judgment in favor of Perry and against David Sedwick, et al.,[2] pursuant to a mediated agreement.

We affirm.

ISSUE

Whether the trial court abused its discretion in denying Perry's motion to set aside the judgment.

FACTS

The facts and procedural history pertaining to this case are gleaned from the chronological case summary and various documents included in Perry's appendix. David Sedwick is a managing member of Property Specialists, LLC ("Property Specialists"). In June of 2000, David Sedwick, on behalf of Property Specialists, and Doris Butler entered into a lease agreement with the option to purchase (the "Butler Lease") real estate located at 6554 E. C.R. 475 N., Mooreland (the "Real Estate"). Butler agreed to lease the Real Estate to Property Specialists from July 11, 2000, to January 10, 2001, with the option to extend the term by six months. The Butler Lease contained an option to purchase the

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[1] We note that Perry's brief fails to comply with Indiana Appellate Rules 46(A)(1), (3), (4)-(8) and 43(D) and (E). Furthermore, Perry's appendix fails to comply with Appellate Rule 50(1) and (2)(f). "It is well settled that pro se litigants are held to the same standard as are licensed lawyers." *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

[2] The appellees have not filed a brief. "[W]e do not undertake the burden of developing arguments for the appellee." *Damon Corp. v. Estes*, 750 N.E.2d 891, 892-93 (Ind. Ct. App. 2001). In such cases, we apply a less stringent standard of review with respect to demonstrating reversible error; accordingly, we will reverse if the appellant establishes prima facie error. *Id*. at 893.

Real Estate "at any time during the term" of the Butler Lease "or any extension thereof." (App. 159).

On or about July 27, 2000, David Sedwick, as managing member of Property Specialists, established the 6554 E. C.R. 475 N. Paper Trust (the "Paper Trust"). The Paper Trust designated Property Specialists as the Paper Trust's beneficiary and appointed Debra Ellison as trustee. Property Specialists assigned its interest in the Butler Lease to the Paper Trust on July 27, 2000. Pursuant to the Paper Trust, the beneficiary retained the right to manage the Paper Trust's property. On August 18, 2000, Ellison, as trustee, entered into a real estate management contract with David Sedwick and his wife, Marlene Sedwick, under which the Sedwicks were retained to manage the Real Estate.

In May of 2004, Perry and the Paper Trust entered into a lease with option to purchase (the "Lease") the Real Estate. The Paper Trust agreed to lease the Real Estate to Perry from May 1, 2004, to April 30, 2005. The Lease contained an option to purchase the Real Estate after one year. Marlene Sedwick signed the Lease on behalf of the Paper Trust.

On February 24, 2005, the Paper Trust filed a notice of small claim against Perry, seeking $2,450.00 for rent, fees, and costs. Perry filed a counter-claim against "David Sedwick, David Sedwick d/b/a Trustee, Paper Trust, Marline [sic] Sedwick and Marline [sic] Sedwick d/b/a Trustee, Paper Trust and Paper Trust [sic], Trustee of [the Real Estate]," seeking judgment in the amount of $15,064,000.00, plus punitive damages, fees

and costs.[3] (App. 68). Accordingly, Perry sought to have the case transferred to the trial court's plenary docket. On or about March 22, 2005, the trial court ordered the case transferred to the plenary docket.

After numerous motions, discovery requests, and orders, the trial court ordered the parties to submit to mediation in November of 2006. On March 6, 2007, the trial court appointed David Copenhaver as the mediator. Copenhaver sought to be recused from the case on April 17, 2007.

The trial court again ordered the parties to mediation on May 9, 2007. On May 23, 2007, the trial court appointed Max Howard as mediator.

On July 26, 2007, Howard filed his report of mediation and the parties' Mediation Agreement. The Mediation Agreement provided as follows:

> 1. Plaintiffs/Counter-Defendants and Counter-Plaintiff/Defendant agree to dismiss all claims and counterclaims with prejudice.
>
> 2. Plaintiffs/Counter-Defendant and Counter-Plaintiff/Defendant will sign a mutual release of all claims.
>
> 3. David and Marlene Sedwick agree to [p]ay Lloyd Perry the sum of [$2,725.00] within one hundred eight [sic] (180) days.
>
> 4. As security for payment of [$2,725.00], David and Marlene Sedwick agree to give Lloyd Perry a lien on the title to a 1972 TR6 which is currently for sale at $6,000.00 with no existing liens.
>
> 5. The parties agree that a judgment for [$2,725.00] will be entered against plaintiffs, Property Specialists, LLC, Paper Trust, David Sedwick and Marlene Sedwick. Lloyd Perry agrees to release the judgment upon receiving the [$2,725.00].

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[3] Among other things, Perry sought compensation for "loss of revenue from [the] sell [sic] of proto types [sic] estimated at market value of $3,000,000.00 dollars each X 5 . . . ." (App. 71).

6. Each party shall be responsible for one-half (1/2) of the mediation expense.

7. The parties request the mediator to file a copy of this Agreement with the Court.

(App. 1085-86). The Mediation Agreement was signed by Perry; David Sedwick, individually and as managing member of Property Specialists and beneficiary of Paper Trust; Marlene Sedwick individually and as managing member of Property Specialists and beneficiary of Paper Trust; and Tara Smalstig, "Attorney for Plaintiffs[.]" (App. 1086).

On July 27, 2007, the trial court entered its order pursuant to the signed Mediation Agreement, entering judgment in favor of Perry "and against Property Specialists, LLC, Paper Trust, David Sedwick and Marlene Sedwick," in the amount of $2,725.00. (App. 29).

On September 13, 2007, Perry filed his "Motion for Relief from all Judgments and Rulings of the Case with the Request for a New Trial by Jury Pursuant to Trial Rule 60(B) Based on and Relating to Extrinsic Fraud by the Plaintiff/Counter-Defendants and their Counsel." (App. 930). The trial court denied Perry's Motion on October 15, 2007. On October 19, 2007, Perry filed an objection to the trial court's denial of his motion for relief from judgment, which the trial court also denied.

Additional facts will be provided as necessary.

DECISION[4]

As best as can be determined from Perry's Statement of Issues and his Argument, Perry asserts that the trial court abused its discretion in denying his motion to set aside the judgment in favor of Perry because fraud "started with the said lease agreement and extended through the court proceedings and into the mediation process . . . ."[5] Perry's Br. 2. In his motion for relief and appellate brief, Perry contends that the Paper Trust did not have legal right of ownership or legal possession of the Real Estate.

We review a trial court's denial of a motion for relief from judgment for abuse of discretion. *Case v. Case*, 794 N.E.2d 514, 517 (Ind. Ct. App. 2003). A trial court abuses its discretion when its denial is clearly against the logic and effect of the facts and inferences supporting the judgment for relief. *Id*. "On a motion for relief from judgment, the burden is on the movant to demonstrate that relief is both necessary and just." *G.B. v. State*, 715 N.E.2d 951, 953 (Ind. Ct. App. 1999).

Trial Rule 60(B) provides, in pertinent part, as follows:

> On motion and upon such terms as are just the court may relieve a party . . . from an entry of default, final order, or final judgment . . . for the following reasons:

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[4] We note that Perry is not a newcomer to this court. Thus, we remind Perry of Appellate Rule 46(A)(8)(a), which states that the appellant's argument "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning." Furthermore, "[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." Ind. Appellate Rule 46(A)(8)(a). We will not become an advocate for a party, and we will not address arguments that are inappropriate, too poorly developed, or improperly expressed to be understood. *Lasater v. Lasater*, 809 N.E.2d 380, 389 (Ind. Ct. App. 2004). Failure to put forth a cogent argument acts as a waiver of the issue on appeal. *Id.*

[5] Perry waives any other purported issue for either failure to set forth a cogent argument, *see* 809 N.E.2d at 389, or failure to raise the issue before the trial court. *See Van Winkle v. Nash*, 761 N.E.2d 856, 859 (Ind. Ct. App. 2002) ("Failure to raise an issue before the trial court will result in waiver of that issue.").

* * *

> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party[.]

"If a party cannot show that fraud, misrepresentation, or misconduct substantially prejudiced the party's presentation of the party's case, a court should not set aside an otherwise final judgment." *Outback Steakhouse of Florida, Inc. v. Markley*, 856 N.E.2d 65, 73 (Ind. 2006). A party moving for relief for fraud, misrepresentation or misconduct must show 1) fraud, negligent misrepresentation, or misconduct; 2) the fraud, misrepresentation, or misconduct prevented the party from fully and fairly presenting his case; and 3) that the party has made a prima facie showing of a meritorious claim or defense. *See id.* at 74.

In his motion for relief, Perry claimed that Paper Trust, the Sedwicks and their counsel "refused to produce or supply documentation in defense of their position of ownership and right to possession, untill [sic] the last moment in mediation making the total mediation process a fraud and another big expense in defense of a false claim." (App. 933) (emphasis added). The alleged fraud asserted by Perry is unclear, where he acknowledges that documents "in defense of their position of ownership and right to possession" were produced during mediation. (App. 933). Furthermore, as such documents apparently were produced, we cannot say, nor has Perry asserted how or why, he was prevented from presenting his case to the mediator prior to signing the Mediation

Agreement. Accordingly, we find that Perry failed to satisfy his burden of proof, and we find no abuse of discretion in denying Perry's motion for relief from judgment.[6]

Affirmed.

NAJAM, J., and BROWN, J., concur.

[6] Furthermore, we note that the trial court did not abuse its discretion in denying Perry's motion for relief from the denial of Perry's motion to dismiss or motion for summary judgment, entered on August 14, 2006, since Perry's motion for relief was filed more than one year after the trial court entered its order on the motion to dismiss and motion for summary judgment. *See* App. R. 60(B) (stating that a motion for relief from judgment or order for reasons listed in subsection (B)(3) must be filed "not more than one year after the judgment, order or proceeding was entered or taken . . . ").